



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18<sup>TH</sup> STREET - SUITE 500

DENVER, CO 80202-2466

<http://www.epa.gov/region08>

March 6, 2001

Ref: 8ENF-T

CERTIFIED MAILRETURN RECEIPT REQUESTED

David Young  
Union Pacific Railroad Co.  
1416 Dodge Street, Room 830  
Omaha, NE 68179

Re: First Request For Information  
Pursuant To Section 104 of CERCLA  
For The Vasquez Boulevard/I-70 Site  
Denver, CO

Dear Mr. Young:

This letter seeks your cooperation in providing information and documents that may contribute to EPA's understanding in regard to activities, materials and parties that may have contributed to contamination at the Vasquez Boulevard/I-70 Site (Site). As you may be aware, this Site includes all or portions of several northeast Denver, CO neighborhoods; including Elyria, Swansea, Cole, Clayton and south Globeville. Arsenic, lead, cadmium and zinc contamination has been studied by the Environmental Protection Agency (EPA), working in cooperation with the Colorado Department of Public Health & Environment (CDPHE).

Historically, the Site was a major smelting center for the Rocky Mountain West. Three large smelters (the Globe Plant, Omaha & Grant Smelter and Argo Smelter (See Enclosed Map)) operated in the area. Preliminary investigation by EPA has determined that Union Pacific Railroad and/ or its predecessors-in-interest owns or formerly owned a portion of the property upon which the Omaha & Grant Smelter operated or where wastes from the smelting operations may have come to be located. The Omaha & Grant Smelter facility is believed to have included approximately 50 acres south of the current Denver Coliseum and continuing southward near 42nd Avenue and Vincent Street (another description placed the smelter stack on 41st Avenue between Chestnut and Delgany Streets). Pursuant to the authority of Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9604, as amended, you are hereby requested to respond to the Information Request set forth in Enclosure 1, attached hereto.

The Site was placed on the EPA Superfund National Priorities List on July 22, 1999.



EPA has to date conducted an emergency response action which removed soil from 51 residential properties contaminated with high levels of arsenic and lead and remedial studies for both the residential soils and the historic location of the Omaha & Grant Smelter are ongoing. For additional information regarding site cleanup, you may review materials which are maintained at the EPA Superfund Records Center at 999 18th Street, Suite 500, Denver, CO. While EPA seeks your voluntary cooperation in this investigation, compliance with this Information Request is required by law. We encourage you to give this matter your prompt attention and that you provide a complete and truthful response to this Information Request no later than April 6, 2001. Failure to provide a complete and truthful response to this Information Request may subject you to civil or criminal penalties under federal law. Instructions for completing this Information Request are included in Enclosure 1. If you make a claim of confidentiality for any of the information you submit to EPA, you must prove that claim, and must separately address the points outlined in Enclosure 1, for each document.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.

Your response to this Information Request should be mailed to:

Dawn Tesorero, Technical Enforcement Program  
U.S. Environmental Protection Agency  
999 18th Street, Suite 300  
Denver, CO 80202-2466

If you have questions in regard to this Information Request please contact Ms. Tesorero at (303)312-6883. Please direct legal questions to Ms. Nancy A. Mangone, Legal Enforcement Program at (303)312-6903.

Thank you for your cooperation in this matter.

Sincerely,



Sharon Kercher  
Program Director  
Office of Enforcement Compliance  
and Environmental Justice

Enclosures

cc: Bonnie Lavelle, 8EPR-SR  
Marc Herman, 8EPR-SR  
Dawn Tesorero, 8ENF-T  
Nancy A. Mangone, 8ENF-L  
Carolyn L. McIntosh, Esq.

ENCLOSURE 1

VASQUEZ BOULEVARD/ I-70 SITE

FIRST INFORMATION REQUEST

Instructions

1. Answer Every Question Completely. A separate response must be made to each question set forth in this Information Request. Incomplete, evasive, or ambiguous answers shall constitute failure to respond to this Information Request and may subject you to penalties. For each question contained in this letter, if information responsive to this information request is not in your possession, custody or control, please identify the person(s) from whom such information may be obtained.
2. Number Each Answer. Please indicate at the beginning of each answer the number of the question to which the answers corresponds. Please type or print clearly.
3. Provide the Best Information Available. Provide responses to the best of Respondent's ability, even if the information sought was never put down in writing or if the written documents are no longer available. You should seek out responsive information from current and former employees/agents. Submission of cursory responses when other responsive information is available to the Respondent will be considered non-compliance with this Information Request.
4. Identify Sources of Answers. For each question, please identify all documents consulted (See Definitions) all the persons and documents you relied on in producing your answers.
5. Submit Documents with labels Keyed to Question. For each question, please identify all documents consulted in the preparation of the answer. If for any reason you are withholding any documents that may be responsive to this Information Request, identify the document(s) and state the basis for withholding the document(s).
6. Continuing Obligation to Provide/Correct Information. If additional information or documents become known or available to you after you respond to this request, EPA hereby requests pursuant to CERCLA Section 104(e) that you supplement your response to EPA.
7. Complete a Notarized Certificate. You are required to complete a Notarized Certificate that certifies that the information you are providing in response to this Information Request is true, accurate, and complete. A sample format is included in Enclosure 2.

8. Confidential Information. The information requested herein must be provided even though the Respondent may contend that it includes possibly confidential information or trade secrets. You may, if you desire, assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 104(e) (7) (E) and (F) of CERCLA, as amended by SARA, 42 U.S.C. 9604(e) (7) (E) and (F), Section 3007(b) or RCRA, 42 U.S.C. 6927 (b), and 40 CFR 2.203 (b), by attaching to such information at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," or "proprietary" or "company confidential." Information covered by such a claim will be disclosed by EPA only to the extent, and only by means of the procedures set forth in 40 C.F.R. Part 2, 41 Fed. Reg. 36,902 (1976) (amended at 43 Fed. Reg. 40,000 (1978), and 50 Fed. Reg. 51,661 (1985)). If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you. You should read the above cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. To prove your claim of confidentiality, each document must separately address the following points:

1. The portion of the information alleged to be entitled to confidential treatment;
2. The period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
3. Measures taken by you to guard against the undesired disclosure of the information to others;
4. The extent to which the information has been disclosed to others, and precautions taken in connection therewith;
5. Pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and
6. Whether you assert that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, and if so, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

9. Disclosure to EPA Contractor. Information which you submit in response to this Information Request may be disclosed by EPA to authorized representatives of the United States, pursuant to 40 C.F.R. 2.310(h), even if you assert that all or part of it is confidential business information. Please be advised that EPA intends to disclose all responses to this Information Request to one or more of its private contractor list Contractors for the purpose of organizing or analyzing the information contained in the responses to this Information Request. If you are submitting information, which you assert is entitled to treatment as confidential business information, you may comment on this intended disclosure within (14) business days of

receiving this Information Request.

### Definitions

The following definitions shall apply to the following words as they appear in this Enclosure 1:

1. The term "you" or "Respondent" shall mean the Union Pacific Railroad Company, the addressee's officers, managers, employees, contractors, trustees, partners, successors, assigns, agents, subsidiaries, affiliates and predecessors-in-interest.

2. The term "person" shall have the same definition as in Section 101(21) of CERCLA: an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

3. The terms "the Site" or "the Facility" for purposes of this Information Request shall, include the sites of the former and current Omaha & Grant Smelter, the Argo Smelter (also known as Boston and Colorado Smelter) and the Globe Smelter and additionally shall include neighborhoods surrounding these smelter operations.

4. The term "hazardous substance" shall have the same definition as that contained in Section 101(14) of CERCLA and includes any mixtures of such hazardous substances with any other substances, including petroleum products.

5. The term "pollutant or contaminant" shall have the same definition as that contained in Section 101(33) of CERCLA, and includes any mixtures of such pollutants and contaminants with any other substances, including petroleum products.

6. The term "hazardous waste" shall have the same definition as that contained in Section 1004(5) of RCRA.

7. The term "solid waste" shall have the same definition as that contained in Section 1004 (27) of RCRA.

8. The term "materials" shall mean all substances that have been generated, treated, stored, or disposed of or otherwise handled at or transported to the Site, including but not limited to all hazardous substances, pollutants and contaminants, hazardous wastes and solid wastes, as defined above.

9. The term "hazardous materials" shall mean all hazardous substances, pollutants or contaminants, and hazardous wastes, as defined above.

10. The term "identify" means, with respect to a natural person, to set forth the

person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.

11. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship) to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any and a brief description of its business.

12. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number if any (invoice or purchase order number), and the substance or subject matter.

13. The term "release" has the same definition as that contained in Section 101(22) of CERCLA, 42 U.S.C. 9601 (22), and includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any hazardous substances or pollutant or contaminant.

14. The term "document" and "documents" shall mean any writing, recording or stored information including, but not limited to, hard copy and computer document files.

15. The term "arrangement" means every separate contract or other agreement between two or more persons.

16. The term "transaction" or "transact" mean any sale, transfer, giving, delivery, change in ownership, or change in possession.

17. The term "property interest" means any interest in property including an easement or right of way, any interest in the rental of property, any interest in a corporation that owns or rents or owned and rented property, and any interest as either the trustee or beneficiary or trust that owns or rents property.

## QUESTIONS

1. Provide a legal description of the property or properties The American Smelting and Refining Company (ASARCO), the City and County of Denver (City) or any other party sold, exchanged or transferred to you upon which the former Omaha & Grant Smelter facility operated or its wastes came to be located.
2. Provide copies of all documents evidencing or relating to the property or properties identified in response to #1 above (Include copies of sales, purchase agreements, deeds, easements or exchange agreements, etc.).
3. Describe the period(s) Respondent held the property or properties comprising the former Omaha & Grant Smelter facility or properties where waste from the Omaha & Grant Smelter had come to be located and describe any and all uses to which the property was put to during those periods.
4. If UP subsequently transferred any of the property or properties identified above provide title documents showing the transfer of the property or properties. Additionally, provide any information you may have in regard to property use subsequent to sale of the property or properties by the City.
5. Provide any current or historical map(s) you may have in regard to the Omaha & Grant Smelter facility.
6. Describe and, where available, provide maps that describe the physical characteristics of the Site, including but not limited to the following:
  - a. Surface structures;
  - b. Ground water wells;
  - c. Ore treating facilities;
  - d. Additions, demolitions, changes to the physical structures on or about the Site property during the period UP owned the Site; and
  - e. Slag piles, flue dust piles or waste dumps.
7. Identify and describe all tailings piles, tailings ponds, flue dust piles, waste rock dumps, and slag heaps at the Site that you have knowledge of. Include the following:
  - a. The location of all former piles, ponds, dumps, and heaps;

- b. The source of materials contained in those former piles, ponds, dumps, or heaps;
- c. A description of the materials in those piles, ponds, dumps or heaps and any information or documents that relate to the transport by hand, wagon (or other horse-drawn vehicle), truck (or other motorized vehicle), train or rail car or water or wind or other natural or man-made means materials from those piles, ponds, dumps or heaps to another area;
- d. All current or historical information you may have in regard to smelter emissions or other hazardous substance releases at the facility; and
- e. Any additions, subtractions or movement of those piles, ponds, dumps or heaps regardless of whether such additions, subtractions or movement were made by UP or other parties.

8. Identify whether soil (e.g., also sand, loam, fill) or any other materials (slag, flue dust, arsenic trioxide, debris), including but not limited to, materials containing lead, arsenic or other heavy metals have been excavated or removed from the Site or brought to the Site (including any sale, transfer, giving, change in ownership, or change in possession) by Respondent or others. If so, detail:

- a. Amount and date(s) of soil or other materials removed from or brought to the Site;
- b. Physical and chemical nature of materials removed or brought to the Site;
- c. Identity of person(s) who removed or brought the materials and date(s) of such removal or addition;
- d. Final disposition of such materials.

9. Provide all information in your possession which may relate to the presence (or absence) of hazardous substances within the Site. Specifically, if available, provide information regarding the following:

- a. the use of slag, waste rock, tailings, flue dust or other smelter waste material as railroad bed;
- b. selection of methods and locations for disposal of waste materials (including slag, waste rock, tailings, flue dust or other smelter waste) at the Site;



- c. the use of creosote or other organic materials on railroad ties or cross timbers at the Site;
- d. the disposal or migration of lead, arsenic or heavy metal-containing smelter waste from the Omaha & Grant smelter or Argo Smelter buildings;
- e. the disposal or migration of any hazardous substances, pollutants or contaminants as the result of any derailment, spill or related railroad activities from trains travelling through the Site;
- f. the transportation of any materials used in any smelter process to the Site;
- g. the release or migration of any hazardous substances, pollutants or contaminants as the result of any disposal practice or procedure conducted within the Site (e.g., burial of discarded drums or parts, disposal of waste oil or debris in landfills or pits, disposal of wastewater from train washing operations);
- h. any activities, including removal, disposal, redisposal, contouring, grading, excavating or otherwise affecting the size, shape and location of the slag or roaster piles;
- i. the use of slag, waste rock, tailings, flue dust or other smelter waste material as fill material;
- j. any sampling and analysis of waste material within the Site;
- k. any sampling or analysis of water quality in the South Platte River;
- l. monitoring of environmental conditions at the Site;
- m. describe any current or potential future uses of any property interest of the Respondent which is not for common carrier purposes. Include in this response information regarding any plans or discussions the Respondent has had with any party that may acquire the property interest in the future; and
- n. ownership, control, possession or use of any buildings, dwellings, fixtures or other structures within the Site.

10. Identify all corporate officers, directors, employees, agents or contractors that were involved in any of the functions listed in a. through n. of question 9 above and describe their roles in the performance of those functions.

11. Provide a list of any environmental or other reports you may have that relate to environmental conditions on or about the Omaha & Grant Smelter facility and also properties in the vicinity of the former Argo Smelter and Globe Smelter.

12. Please describe in detail the corporate and financial relationships between UP and the following corporate entities or persons: Omaha Smelting and Refining Company, the Omaha and Grant Smelting and Refining Company, the Omaha and Grant Company, the Argo Smelting Company, the Boston and Colorado Smelting Company, Mr. James B. Grant, Mr. Edward Eddy, Mr. William H. James and Mr. Malvern W. Iles and the Burlington Northern Railroad. Your response should include, but not be limited to, the following information:

- a. The nature and extent of any ownership interest that UP had in any of these other corporate entities, including whether UP owned a majority or significant amount of capital stock, and when and how such ownership interest was acquired.
- b. Whether any of these other corporate entities and UP had common directors or officers. If so, identify such persons, in accordance with Definition 3 provided above, and provide the dates of service.
- c. Whether any of these other corporate entities and UP have ever transacted business with each other. If yes, provide complete information regarding the nature and extent of such transactions or business relationship.
- d. Whether UP ever made any loan to these corporate entities or individuals. If so, please provide complete information pertaining to such loan(s). For the purposes of this question, "loan" shall include the establishment of a line of credit by UP for the use and/or benefit of any of these corporate entities or individuals.
- e. Whether UP ever acted directly or indirectly to guarantee any loan made to any of these other corporate entities or individuals. If so, provide complete information regarding such arrangement, including copies of all documents pertaining to such arrangement.
- f. Whether UP ever made any monetary payment for or on behalf of any of these other corporate entities or individuals. If so, provide copies of all documents pertaining to such payments.
- g. Whether any of the employees, officers, and/or directors of these other corporate entities had their salaries or other employment benefits, including, but not limited to, paying the employees', officers', and/or directors' share to participate in any manner in any savings programs, pension plans or other financial benefit, paid by UP. If so, explain in detail.

ENCLOSURE 2

NOTARIZED CERTIFICATE

I, \_\_\_\_\_, having been duly sworn and being of legal age, hereby state:

1. I am the person authorized by \_\_\_\_\_ to respond to the Environmental Protection Agency's (EPA's) request for information concerning the Vasquez Boulevard & I-70 Site located in Denver, Colorado.
2. I have made a complete and thorough review of all documents, information, and sources relevant to the request.
3. I hereby certify that the attached response to EPA's request is true, accurate, and complete and contains all information and documents responsive to the request.

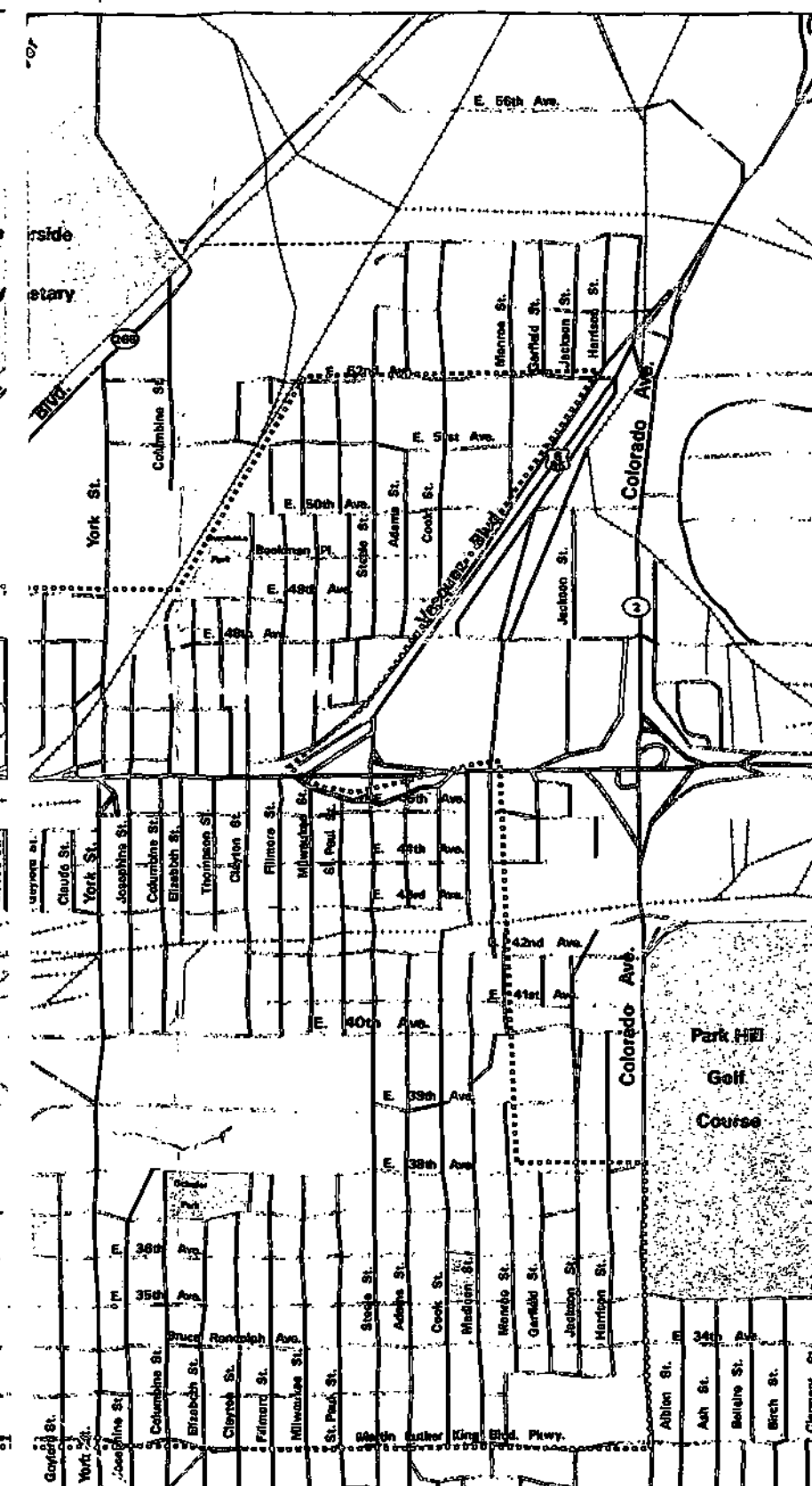
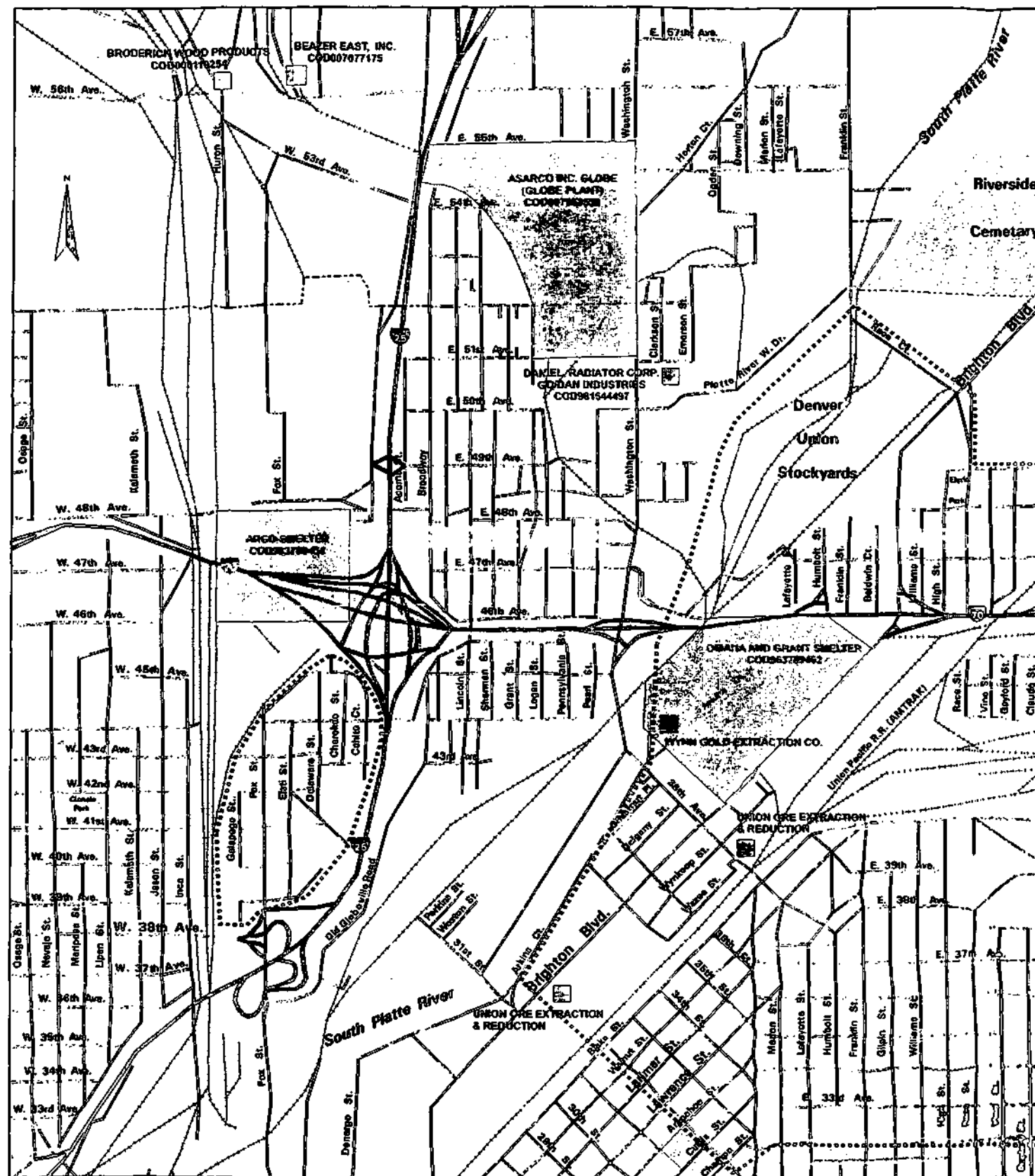
\_\_\_\_\_  
(Signature) (Name, Title)

(SEAL)

Subscribed and sworn to me  
this \_\_\_\_ day of \_\_\_\_\_,  
2001.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_  
My address is \_\_\_\_\_  
\_\_\_\_\_



— Interstate  
 — City Street  
 - - - Railroad  
 - - - County Line

Neighborhood

■ Park  
 ■ Stockyard  
 ■ Cemetery  
 ■ Hydrology

..... Approximate Soil Sampling Boundary  
 □ Approximate Facility Location  
 □ Smelter Property

Prepared for:

U.S. Environmental Protection Agency



Prepared by:

ISSI, Inc.  
 999 18th Street, Suite 1180  
 Denver, CO 80202



FIGURE 1  
 Site Map